

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA  
OKLAHOMA CITY DIVISION

NGO LOVE, LLC d/b/a  
DEVILLE SHOPPING CENTER

Plaintiff,

v.

STEADFAST INSURANCE COMPANY,  
and ZURICH NORTH AMERICA,

Defendants.

CIV-18-1079-G  
CIVIL ACTION NO. \_\_\_\_\_

**DEFENDANT STEADFAST INSURANCE COMPANY'S  
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. § 1441, Defendant Steadfast Insurance Company (“Defendant”) hereby removes the action styled and numbered, *NGO Love, LLC d/b/a Deville Shopping Center v. Steadfast Insurance Company and Zurich North America*, Cause No. CJ-2018-2344, currently pending in the District Court of Oklahoma County, State of Oklahoma. NGO Love, LLC d/b/a Deville Shopping Center (“Plaintiff”) improperly named Zurich North America as a defendant in this action. Zurich North America is a trade name, not a legal entity that may be sued or against which a judgment may be executed. Zurich North America is not a “citizen” of any state and should be disregarded for diversity jurisdictional purposes.

For the reasons set forth below, removal of the state court action is proper under 28 U.S.C. §§ 1332, 1441, and 1446.

**I. THE REMOVED ACTION**

1. On April 30, 2018, Plaintiff filed its Original Petition in Cause No. CJ-2018-2344.

## **II. NOTICE OF REMOVAL IS TIMELY**

2. Pursuant to agreement of the parties by which Defendant Steadfast agreed to accept service, Plaintiff served Steadfast Insurance Company with the state court Petition on October 11, 2018.

3. This lawsuit arises out of Plaintiff's claim for coverage under a commercial property insurance policy issued by Defendant Steadfast Insurance Company for storm damage purportedly sustained by Plaintiff's property in Bethany, Oklahoma during a weather event allegedly occurring on or about May 27, 2016.

4. Plaintiff's Original Petition alleges causes of action against Defendant Steadfast Insurance Company for breach of contract and bad faith.<sup>1</sup>

5. No further pleadings have been filed, and no proceedings have yet occurred in the Oklahoma County action. Defendant Steadfast Insurance Company, therefore, timely files this Notice of Removal within the 30-day time period required by 28 U.S.C. § 1446(b).

## **III. VENUE IS PROPER**

6. Venue is proper in this District under 28 U.S.C. §§ 124(a)(5) and 1441(a) because this district and division embrace the place in which the removed action has been pending.

## **IV. BASIS FOR REMOVAL JURISDICTION**

7. Removal of this action is proper under 28 U.S.C. § 1441 because it is a civil action brought in a state court, and the federal courts have original jurisdiction over the subject matter pursuant to 28 U.S.C. § 1332.

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<sup>1</sup> See Plaintiff's Original Petition, attached as Exhibit 1-3-a.

8. Specifically, removal is proper because there is now, and was at the time this action was filed, complete diversity of citizenship between Plaintiff and Defendant, and because the amount in controversy exceeds \$75,000 excluding interest, costs, and attorneys' fees.

**A. DIVERSITY OF CITIZENSHIP EXISTS**

9. Diversity of citizenship exists when a suit is between citizens of different states or citizens of a state and citizens of a foreign state. 18 U.S.C. § 1332(a)(1)-(2).

10. Plaintiff is an Oklahoma Limited Liability Company with its principal place of business in Oklahoma City, Oklahoma, and is thus a resident and citizen of Oklahoma for purposes of diversity of citizenship.

11. Steadfast Insurance Company is a Delaware corporation with its principal place of business located at 1299 Zurich Way, Schaumburg, Illinois 60196. Steadfast Insurance Company is therefore a citizen of Delaware and Illinois for purposes of diversity of citizenship.

12. Zurich North America is a trade name, not a legal entity that may be sued or against which a judgment may be executed. Zurich North America is not a "citizen" of any state and should therefore be disregarded for determination of diversity jurisdiction.

13. Accordingly, now, and at the time the action was filed, there is complete diversity of citizenship between Plaintiff and the only properly named Defendant, Steadfast Insurance Company.

**B. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000**

14. In its Petition, Plaintiff specifically alleges that damages to its property covered by its insurance policy issued by Steadfast exceed the policy limit of \$5,240,000, and that Defendants have paid nothing on its claim. (Petition at ¶¶ 21-22.) Plaintiff further alleges that, as a result of Defendants' breach of contract and other wrongful conduct, Plaintiff has been

damaged in an amount in excess of \$75,000, exclusive of interest, costs and attorneys' fees.

(Petition at ¶ 29.) For these reasons, the amount in controversy requirement is satisfied.

#### **V. COMPLIANCE WITH 28 U.S.C. §1446**

15. In accordance with 28 U.S.C. 1446(a) and Local Rule 81.2, Defendant Steadfast Insurance Company files this Notice of Removal accompanied by the following exhibits:

- A.** an index of all documents attached to (or filed with) this Notice that clearly identifies each such document and indicates the date the document was filed in state court (if applicable) – identified as Exhibit 1.
- B.** an index of all documents filed in the state court action – identified as Exhibit 1-1;
- C.** a copy of the docket sheet in the state court action – identified as Exhibit 1-2; and
- D.** each document filed in the state court action (as separate attachments arranged in chronological order according to state court filing date) – identified as Exhibit 1-3-a through Exhibit 1-3-c.

16. Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice of Removal will be filed with the clerk of the District Court of Oklahoma County, Oklahoma, promptly after Defendant Steadfast Insurance Company's filing of the notice. True and correct copies of this Notice of Removal will also be provided to all adverse parties in accordance with 28 U.S.C. § 1446(d) and the Federal Rules of Civil Procedure.

#### **VI. JURY DEMAND**

17. Plaintiff is demanding a jury trial.

WHEREFORE, Defendant Steadfast Insurance Company requests that this action be removed from the Judicial District Court of Oklahoma County, Oklahoma, to the United States District Court for the Western District of Oklahoma, Oklahoma City Division, and that this Court enter such further orders as may be necessary and appropriate.

Respectfully submitted,

**ZELLE LLP**

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**ATTORNEYS FOR DEFENDANT  
STEADFAST INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 1, 2018, a true and correct copy of the foregoing document was served upon all known counsel of record pursuant to the Federal Rules of Civil Procedure as follows:

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/s/ Eric K. Bowers

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